***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4345 of 2007
Date of decision: 19.12.2007

Ranjit Singh **...Petitioner**

Versus

Mehfil Restaurant **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

****

Present: Mr. Sudeep Mahajan, Advocate for the petitioner.

None for the respondent.

****

RAJESH BINDAL, J.

The challenge in the present petition is to the order dated August 13, 2007 passed by learned Civil Judge (Junior Division), Chandigarh whereby application filed by the petitioner/plaintiff under Order 18 Rule 3 of the Code of Civil Procedure for leading rebuttal evidence was dismissed.

Notice in the petition was issued on August 27, 2007 by Dasti process for September 17, 2007. As per office report, service of the respondent was complete. However, no one appeared for the respondent on the date fixed. Even on November 27, 2007 and today as well no one has appeared for the respondent. Accordingly, petition is taken up for hearing for final disposal.

Briefly, the facts, as stated in the petition, are that petitioner/plaintiff filed a suit for recovery of Rs. 1,71,405/- against the respondent/defendant which included unpaid amount of various service benefits payable to the petitioner at the time of resignation from employment including a sum of Rs. 1,45,000/- given as loan by the petitioner/plaintiff to the respondent/defendant. The allegations made by

***

the petitioner in the plaint were denied by the respondent/defendant with the plea that the amount of loan had already been returned back to the petitioner. On the pleadings of the parties, following issues were framed:-

"1. Whether the plaintiff is entitled to recover the suit amount along with interest from the defendant? OPP
2. Whether the suit is within the limitation? OPD
3. Whether the plaintiff has not come to the court with clean hands and the suit is liable to be dismissed? OPD
4. Whether the plaint has not been properly valued for the purpose of court fees and jurisdiction? OPD
5. Whether the plaintiff has not impleaded the proper and necessary party in the present suit?
6. Relief".

After the petitioner/plaintiff closed his evidence in affirmative, the respondent/defendant in his evidence produced documents Ex. DW 2/4 and Ex. DW 2/5 in the form of receipt for the alleged repayment of loan amount to the petitioner/plaintiff. It is these documents, which the petitioner/plaintiff sought to controvert by leading the evidence in rebuttal. However, learned trial Court did not find merit in the application and rejected the same for the reason that the substance of the documents were already mentioned in the written statement and further in cross examination of the plaintiff on January 31, 2005 these documents were duly confronted to him and at that time, the petitioner had the opportunity to controvert the same, accordingly he is not entitled to any fresh opportunity to controvert these documents by leading evidence in rebuttal.

Learned counsel for the petitioner submitted that once petitioner had closed his evidence in affirmative and in the evidence led by the respondent/defendant, some documents were produced to discharge the burden lay on it, the petitioner has every right to rebut those document by leading rebuttal evidence including by a report of the hand writing/document expert as after leading of the evidence by the respondent/defendant discharging his burden, the onus had again shifted on the petitioner/plaintiff to prove his case. He has relied upon the judgments

***

in **Kashmir Kaur Vs. Bachan Kaur 2000 (2) Civil Court Cases 375 (P&H) , M/s Punjab Steel Corporation, Batala Vs. M.S.T.C. Limited, Calcutta 2002 (1) Civil Court Cases 503 (P&H)) Surjit Singh and others Vs. Jagtar Singh and others 2007(2) Civil Court cases 115 (P&H)** and **Kewal Singh Vs. Jagjit Singh 2007 (4) Civil Court Cases 658 (P&H).**

A perusal of various issues framed by the learned trial Court shows that onus of issue no.1, as to whether the plaintiff is entitled to recover the suit amount along with interest from the defendant, is on the petitioner/plaintiff whereas onus of issue no. 3, as to whether the plaintiff has not come to the court with clean hands and the suit is liable to be dismissed, is on the defendant. This issue was framed with the pleadings of the defendant in the written statement to the effect that infact even after receiving the amount of loan, the petitioner/plaintiff had still made a claim regarding that and accordingly had not approached the Court with clean hands. The evidence in rebuttal which is sought to be led by the petitioner/plaintiff is to rebut the positive evidence led by the respondent/defendant in the form of vouchers which allegedly contain the signature of the petitioner/plaintiff acknowledging the repayment of loan advanced by him to the respondent/defendant. From the material on record, it is evident that at the first instance, documents were merely confronted to the petitioner/plaintiff during his cross examination and at that time these were merely marked and not exhibited. It was only when respondent/defendant led his evidence that these documents were exhibited, which gave cause of action to the petitioner/plaintiff to rebut these documents.

This Court in Kashmir Kaur's case (supra) while dealing with the issue where rebuttal evidence should be permitted, opined as under:-

> "The view that has been taken by this court in the matter otherwise also appears to be in consonance with the provisions of Code of Civil Procedure as well. Order 18 deals with examination of witnesses, By virtue of Rule 1 of Order 18, plaintiff has the right to begin unless the defendant admits the

***

facts alleged by him. As per rule 2 of Order 18, on the day fixed for hearing of the suit or any other day to which the hearing is adjourned, the party having the right to begin has to state his case and produce evidence in support of the issues which he is bound to prove. Rule 2 of Order 18 further provides that the other party can then state his case and produce his evidence and may then address the Court generally on the whole case. By virtue of Rule 3 of Order 18, the party beginning may then reply generally on the whole case. The provisions of Order 18 do, thus, prescribe the procedure of recording evidence which in turn entails a right of plaintiff to lead evidence in rebuttal, even with regard to an issue, onus whereof was initially upon him. The procedure prescribed for recording evidence, as envisaged in Order 18, is based upon common sense. Insofar as plaintiff is concerned, while examining his evidence, in affirmative, he has no idea as to by which evidence, the defendant is to rebut his evidence, whereas the defendant, while leading his evidence, knows exactly what evidence has been led by the plaintiff and by which evidence he has to rebut the same. The defendant is, thus, permitted to lead evidence with regard to whole case which right has been given to the plaintiff by way of rebuttal i.e. he too can address on the entire case. The whole case mentioned in various rules of Order 18 does include in its sweep, the issues onus whereof is upon the plaintiff. At this stage, it may be relevant to mention that this is law of pleadings as well. When the plaintiff files a suit, defendants knows that exactly has been dislcosed therein. He is, thus, given a right to file written statement wherein he may not only answer the pleadings made in the plaint but may also press into service additional pleas which can entail dismissal of the suit. The plaintiff is then given a right to file replication and the same is not confined only to additional pleas taken in the written statement. The plaintiff has also right

***

to file reply to the written statement as a whole."

In M/s Punjab Steel Corporation, Batala's case (supra) this Court opined as under:-

> "Plaintiff could not be barred from adducing evidence to rebut the evidence led by the defendants on issues No. 3, 4 and 5. Plaintiff could not be barred from leading evidence by way of reply generally on the whole case. While leading their evidence, the defendants led evidence to prove issues No. 3,4 and 5. In defendants led evidence to prove issues No. 3,4 and 5. In addition, they led evidence to disprove issues No.1 and 2. Plaintiff had to be given an opportunity to rebut the evidence led by the defendants on these two aspects of the case. These of the words in Order 18 Rule 3 CPC, that the party beginning will then be entitled to reply generally on the whole case, " suggests that while leading rebuttal evidence, the plaintiff can lead evident to rebut the evidence led by the defendants on the issues, the onus of which lay on him plus to rebut the evidence which defendants to rebut the evidence led by the plaintiff on the issues, the onus of which lay on the plaintiff.

In Kewal Singh's case (supra), this Court has opined as under:-

> "The plaintiff though had been negligent in leading the evidence in affirmative which he wants to produce now but for such a lapse the other side can well be compensated with costs. At the same time it is basic rule of law that wherever end of justice demands, the procedural law should be construed liberally to achieve such ends rather than to scuffle the parties right at the trial stage and prevent them from leading complete evidence in support of their case. This would be more true in the cases where such evidence relates to the basic issue to be determined by the Court. The plaintiff-respondent does not stand to gain by delaying the matter as it is his suit for recovery of money. Moreover, no prejudice is shown to have been

***

> caused to the defendant by allowing the said application by the learned trial court, who obviously has an opportunity to cross-examine the witness, so produced by the plaitniff in rebuttal. The High Court would not interfere with an order unless the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to party against whom it was made."

This Court while dealing with the issue regarding leading of rebuttal evidence by the plaintiff where onus of an issue is on the defendant, in **Civil Revision No. 4087 of 2006 (Jai Narain Vs. Satya Narain and others)** decided on August 27, 2007, opined as under:-

> "After hearing the learned counsel for the parties and considering the legal position as discussed above, I find merit in the contention raised by learned counsel for the petitioner. In the present case, it is not in dispute that the onus of the issues No.5 and 12 is on the defendants/respondents. If during the course of leading evidence on the issues, the onus whereof was on the plaintiff, any statement was made with regard to issues the onus of which is on the defendants, the same shall not mean that plaintiff had infact led or concluded his evidence on those issues as it is only after the defendant has led his evidence that plaintiff will come to know the same and get an opportunity to rebut the same. Plaintiff cannot presuppose the evidence which is to be led by the defendant on the issues, the onus whereof is on him. Even otherwise procedural law is subservient to the cause of justice."

In case the principles enunciated in the above referred cases are applied in the fact and circumstances of the present case, the same would support the plea raised by the petitioner. Firstly, the evidence which is in the form of vouchers showing refund of the loan amount given by the petitioner/plaintiff to the respondent/defendant were exhibited by the respondent/defendant in his evidence and it was only thereafter the petitioner gets an opportunity to rebut those documents to prove his case and demolish the case set up by the respondent/defendant. Prior to that it

***

was only that these documents were confronted to the petitioner in his cross examination and were merely put on record and marked. The same without having formally proved on record were not to be read in evidence and for that reason, the petitioner in the facts and circumstances of the case, rightly thought not to rebut the same at that stage. In his evidence, the respondent/defendant may or may not have exhibited these documents in defence. Secondly these documents were not only proved in evidence in rebuttal to the evidence led by the plaintiff/petitioner on issue no.1 rather on issue no.3 as well where respondent/defendant had pleaded in the written statement that petitioner/plaintiff had not approached the Court with clean hands. Once an issue the onus of which initially was on the defendant, the plaintiff certainly has right to rebut the evidence led by the defendant on that issue.

For the reasons mentioned above, present petition is accepted. Impugned order passed by learned Civil Judge (Junior Division), Chandigarh is set aside. The petitioner is permitted to lead evidence in rebuttal to controvert the documents Ex. DW 2/4 and Ex. DW 2/5 produced by the respondent/defendant in his evidence. Parties will now appear before the learned trial Court on January 9, 2008 for further proceedings.

December 19, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to Reporter)